Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of Implementation of Section 621 (a) (1) of the Cable Communications Policy Act of 1984 as amended by the Cable Television Consumer Protection and Competition Act of 1992	)))))	MB Docket No. 05-311

COMMENTS OF THE GEORGIA MUNICIPAL ASSOCIATION

These comments are filed by the Georgia Municipal Association ("GMA") in response to the Notice of Proposed Rulemaking ("NPRM") adopted by the Federal Communications Commission (the "FCC") on November 3, 2005. GMA was created in 1934 and is the only state organization that represents municipal governments in Georgia. GMA is a non-profit organization that provides legislative advocacy, educational, employee benefits and technical consulting services to our members.

GMA's general membership currently includes 503 municipal governments which comprise more than 99% of the state's municipal population. A 62 member Board of Directors composed of city officials governs GMA. Program administration is charged to the Executive Director and staff of 80 full-time employees. GMA is an active member of the National League of Cities ("NLC") and, at present, our Executive Director serves on the NLC Board. In addition to core services, there are individual programs available to our members that are ancillary to general membership. One of these programs is the Cable and Telecommunications Management Services ("CTMS") program.

The CTMS program was formed in 1993, in response to the passing of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Act") to provide technical consulting services to members who joined the program. Since 1992 we have represented over 200 Local Franchising Authorities ("LFA's) in negotiating over 450 individual new and renewal franchises for municipal and county governments. The services we provide to our CTMS members include: franchise negotiations for both cable television and telecommunications providers; franchise renewal negotiations for both cable television and telecommunications providers; franchise administration and management to include franchise compliance, complaints, rate reviews in accordance with FCC rules and regulations, requests for franchise transfer and/or modifications; and the periodic review and comment on current and pending legislation or issues that could impact the provision of cable television and telecommunications services under our members' jurisdiction.

The comments we file here today are designed to first provide insight into what we, as consultants to member governments, and our members themselves have experienced in regard to the request for and award of competitive franchises, as well as renewal franchises for incumbent providers, and second to suggest a process whereby the application and approval procedures could be standardized, streamlined and made fair to both new entrants and incumbent providers.

GENERAL OBSERVATIONS

We want to make sure that in this process we do not lose sight of the principal goal of the Telecommunications Act of 1996 (the "1996 Act") which is as follows: "To promote competition and reduce regulation in order to secure lower prices and higher quality services for American consumers and encourage the rapid deployment of new telecommunications technologies." We are also mindful of the stated goal of President George W. Bush which is to see that **every** American has access to broadband technology by the year 2007. We are concerned that actions to limit an LFA's ability to franchise all providers of multi-channel video service that utilize the public-right-of-way could be counter-productive to attaining that goal. While we are in favor of competition we need to emphasize that we are supportive of responsible competition, not just competition for competition's sake.

In addition, while some of our members may be unhappy with the service currently being provided or the provider, we cannot ignore the fact that these incumbent providers took risks to bring multi-channel video service to areas where the financial and business risks may not have supported such a decision. In the rush to promote competition we should not necessarily provide inherent advantages to the new applicants at the expense of the incumbent providers and our citizens by allowing the new entrants to re-shape the rules and regulations to allow for a more beneficial franchise agreement. Our experience highlights the fact that the negotiation process from start to finish for both new competitive franchises and renewal franchises can be time consuming and contentious. The problems associated with the process cannot and should not be laid solely at the door of the LFA's. The negotiation process requires a commitment by both sides to move quickly and efficiently. Our experience indicates that is not always the situation.

GEORGIA SPECIFIC FRANCHISE LESSONS
COMPETITIVE FRANCHISES

As mentioned above, GMA has represented approximately 200 different LFA's since the inception of the CTMS program and as such has negotiated

many franchises where there are both multiple providers without direct competition in a single jurisdiction and those where there were requests for competitive franchises. In the majority of instances where GMA negotiated a proposed competitive franchise to provide multi-channel video programming, the applicant either did not initiate their request by filing an application for a franchise or the application was deficient or incomplete. This required the LFA and GMA as their representative to request the necessary information about the applicant to determine whether or not they possessed the financial, technical or legal qualifications to provide multi-channel video service, assurance that the applicant would provide public, educational and/or governmental access capacity and support, whether the system met the current and future telecommunications needs of the community and what their plans were for construction of the competitive system, timeframe, service area, etc.

These requests for information were not, nor should they be, characterized as a barrier to entry since the very minimum of information required under the Communications Act of 1934 as amended (the "Communications Act") was not provided by the applicant. In some circumstances the bare bones financial information was not initially provided.

This process of eliciting the necessary information to allow an LFA to determine the adequacy of qualifications necessary to provide multi-channel video service in a competitive environment within its jurisdiction served only to delay the adoption of a franchise and thereby delay the opportunity for our citizens to have access to a competitive multi-channel video provider. In some instances the LFA, at our recommendation, still entered into an agreement with the applicant because the need to have a competitive provider overrode the concerns generated by a lack of specific information. In areas where there already exists an operating multi-channel video provider, the risk that citizens will not have access to at least one multi-channel video service is mitigated. Our member cities have generally been approached by a local independent phone company or a small cable company that may not have the in-depth understanding of the franchising process which may account for the process taking longer than necessary. In many cases we were instrumental in educating the competitive provider as to what the requirements were for entering into a franchise agreement.

We have observed that the majority of competitive applicants were not familiar enough with the local landscape to even know when and how frequently an LFA's governing body met, what permits and licenses were required, if any, and what were the locally determined communications needs, current and prospective.

The factors outlined above led to a delay in the awarding of a franchise, however, in none of these circumstance was a competitive franchise denied.

GMA and the LFAs we represent in negotiating both a renewal franchise and a new competitive franchise recognize that we are dealing with private enterprise that has its own financial criteria and goals. As such, we choose not to dictate construction and upgrade schedules but rather incorporate what the applicant has set as the timetable. We and our members agree unequivocally

that access to multi-channel video service should not be denied to any group of potential residential subscribers because of the income or demographics of the residents. This belief, when put into action, is not a barrier to entry when the franchisor recognizes that the economics of a competitive marketplace dictate that a more reasonable build-out period is required as opposed to what the incumbent was required to meet and incorporates a more responsible, mutually negotiated build-out. We also believe that the same rules must be applied consistently to all multi-channel video service providers who encroach on the public right-of-way. As regulator and legislator, LFA officials seek to find the proper balance in ensuring each citizen access to competitive multi-channel video service and enhanced telecommunications service while at the same time recognizing that the providers of these services have operational and financial parameters that need to be met.

GMA RECOMMENDATIONS BASED ON OUR EXPERIENCE

GMA has given considerable thought to this NPRM in conjunction with our actual experience in negotiating competitive franchises for the provision of multi-channel video service in selected service areas. We've heard the industry reports that in remote instances some LFA's have established requirements for the issuance of competitive franchises that were considered onerous by the competitive provider. Contra to these remote instances we also discovered that applicants have demonstrated an unwillingness or inability to provide the necessary information for an LFA to make an informed decision relative to the issuance of a competitive franchise or lacked an understanding of the rules and procedures of when and how an LFA can issue a franchise under its local charter and state and federal laws or regulations. Each of these factors has contributed to some competitive franchises not being adopted in a timely manner.

We do not believe that there is sufficient evidence to support a change in how franchises for multi-video service are awarded. Specifically we believe that reliance on Section 621 [47 U.S.C. 541] General Franchise Requirements, of the Communications Act, does not and will not create any barriers to entry. This opinion is based on our actual experience and review and analysis of the arguments presented to date by potential competitive providers. We believe it is not unreasonable for an LFA to carry out its statutory mandates to prevent economic redlining, to establish reasonable build-out requirements to all households in a particular franchise area, to make sure the current and prospective multi-channel video community needs and interests are being met, to provide adequate support, where a demonstrated need exists, for public, educational and government access channel capacity and support and to exercise its police powers to ensure proper use of the public right-of-way.

Notwithstanding the above discussion we believe that some consistency needs to be interjected into the process so as to facilitate the issuance of both

renewal and newly issued competitive franchises. Congress and the FCC at their direction has established certain time constraints on the LFA and the operator in dealing with sales and transfer of ownership of franchises, modification of franchises, and the regulation of rates. GMA believes that it is both necessary and appropriate to establish similar timeframes and reporting requirements for all franchise renewals and the issuance of new competitive or just new franchise requests. As we mentioned in the discussion of our specific Georgia experience, we have found that in the majority of requests for a competitive multi-channel video franchise we reviewed there was no formal application filed that provided any of the information necessary to form an opinion as to the legal, technical or financial ability of the applicant to own and operate said system.

The first step in our recommendation is that the FCC, in consultation with LFAs and providers of multi channel video service, should develop a standardized application form that each applicant for a competitive multi-channel video franchise must fill out and file with the LFA which triggers the review process. The application should include information that will allow the LFA to determine the legal, technical and financial ability of the applicant to own and operate a multi-channel video service and a proposed franchise agreement which, at a minimum, is equivalent to the current agreement with the incumbent operator modified to reflect the build-out schedule of the applicant The LFA would then begin a process to make a determination that the proposed system meets the community's needs and interests in a fair and equitable manner, by performing a community needs assessment in a reasonable time period. The needs assessment and the incumbent provider's current franchise agreement would then be used as a framework to begin negotiations with the competitive provider to develop the competitive franchise agreement in a reasonable time period.

While we are completely against any change which takes the franchising process out of the hands of the local government we do believe that the process needs to be tweaked to recognize that the technology and marketplace have evolved, and to address the need to become more efficient and streamlined. We believe that it may be possible to develop certain "key elements", "definitions" and "parameters" which would be required to be included in each and every new and new competitive franchise as well as renewals of current franchises. These "key elements" would standardize certain parameters or specific definitions which reflect existing law and FCC policy, procedures and directives. Each applicant, whether it is for a renewal franchise agreement or a new competitive franchise agreement, at a minimum, would file with each application a proposed franchise agreement that addresses each of the "key" elements

The second part of our recommendation is to develop a timeline that would allow franchise negotiations to be completed in a reasonable period of time. In offering this recommendation, we recognize that franchise negotiations (or any negotiating process) can be long, tedious and difficult to administer. There may also be other issues that impact the process, such as the economics of a particular provider's business plan, decision making processes of the

provider and the LFA, technical constraints and in some instances one party or the other not having an incentive to move quickly. In order for a required timeframe to be successful there must be a "hammer" on both sides that will encourage the parties to reach a mutually acceptable franchise agreement. One method for doing this could be to require each party to exchange proposed franchise agreements early on in the process, including the mandated "key" elements. If the parties could still not agree after a reasonably short time period, then those proposed agreements would be submitted to non-binding mediation to expedite a resolution.

This process is not intended to eliminate individuality or specific LFA franchise enhancements and requirements that are based on community needs. The burden should rest with the individual LFA to identify these enhancements and requirements. A potential applicant needs to know or be made aware of any specific demonstrated needs of a particular LFA and somehow those needs should be addressed in any application for a renewal or new franchise agreement.

We recognize that our recommendations are not perfect and that as usual the devil will be in fleshing out the details. We are interested in continuing the debate already begun in Congress and in state legislatures to develop final solutions that will balance the LFAs rights, legal responsibilities and community needs with the incumbent operator and new applicant's needs and at the same time bring true competition in video services. Our goal is to introduce a middle ground in the diverse approaches to the competitive and incumbent franchising process and generate dialogue and discussion to facilitate a responsible conclusion.

CONCLUSION

The GMA believes that the local franchising of multi-channel video providers is essential to our cities' responsibility to police and maintain our public rights-of-way. Nothing in our experience in negotiating competitive multi-channel video franchises indicates that the current system cannot accommodate the expected influx of new providers of multi-channel video service. Is the system flawed? **POSSIBLY!** Should it be eliminated? **NO!**

There is no need to create a whole new level of federal involvement in managing local issues absent any concrete evidence that a potential multi-channel video service provider has been disadvantaged. Our experience indicates that in the majority of specific instances where a competitive multi-channel video service provider sought a competitive franchise, there was an unwillingness or inability to abide by the Communications Act and file an appropriate application. We are also aware of situations where some LFAs appear to have made demands that may go beyond what one should normally expect out of a multi-channel video franchise agreement. Neither circumstance requires a major change in how multi-channel video service franchises are awarded. The solution in our opinion is as simple as standardizing the application process that encompasses the requirements of the existing

Communications Act of 1934 as amended, establishing both a reasonable but short timeframe to reach agreement and establish basic parameters for inclusion in all multi-video service franchise agreements that balances the interests of all parties.